

OPINION
51-53

March 5, 1951 (OPINION)

DRAINS

RE: Method of Finance

Your letter under date of February 27, 1951, addressed to the Office of the Attorney General, has been received.

I assume that the cost of cleaning and repairing the drain referred to in your letter exceeds the amount produced by the maximum levy of fifty cents an acre prescribed by section 61-21425 of the 1949 Supplement to the Revised Code of 1943 plus an accumulated fund in an amount produced by such maximum levy for one year. I assume further that the Board of County Commissioners were petitioned by the owners of lands subject to assessment aggregating ten percent of such cost; that the board thereupon proceeded in conformity with the provisions of section 61-21426 of the 1949 Supplement, and that after hearing such petition found that the owners of lands subject to assessments aggregating fifty-one percent of the cost of cleaning and repairing said drain had signed "the original petition".

You desire the opinion of the Attorney General as to what method may be used to finance the cost of the work. As said in your letter, the statutes clearly provide that the land benefited must be assessed to pay the cost of the work in the same proportion that such lands were assessed when the drain was originally constructed.

The rule has repeatedly been stated by the Supreme Court that a municipal corporation, including of course a county or drainage district, possesses only such power or authority as is specifically conferred by statute and which may be reasonably implied in order to enable such public corporation to exercise such authority. It is my opinion that the statutes contemplate and imply that when assessments have been apportioned to the lands benefited, special assessment warrants may be issued in the same manner as when a drain is located and constructed. For the following provision in section 61-21426 of the 1949 Supplement would be meaningless if the county board could not finance the cost of cleaning and repairing a drain:

If, when such hearing has been completed and closed, owners of lands which will be subject to assessments aggregating fifty-one percent or more of the cost of cleaning out or repairing such drain, have signed the original petition, it shall be the duty of the board to cause such drain to be cleaned out and repaired."

It is my opinion that payment of a contract for cleaning and repairing of a drain may not be made from the general fund of the county or from the county road and bridge fund pending collection of special assessments.

ELMO T. CHRISTIANSON

Attorney General